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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 17th September 1955

S.R.O. 2101.—Whereas the election of Shri Beant Singh as a member of the Legislative Assembly of the State of PEPSU, from the Bassi constituency has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Ranbir Singh son of Karam Singh House No. 421 Ward No. 1 Bassi (Pathanan) PEPSU;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

(Here print the Order attached).

BEFORE THE ELECTION TRIBUNAL, PATIALA

Nawal Kishore.—Chairman.

Dalip Singh.—Member.

Krishna Sahai.—Member.

ELECTION PETITION NO. 15 OF 1954

Ranbir Singh s/o Karam Singh House No. 421 Ward No. 1 Bassi (Pathanan)
Pepsu—Petitioner.

Versus

1. S. Beant Singh s/o S. Atma Singh V. Bahadurgarh P.O. Fatehgarh Sahib Tehsil Sirhind, Pepsu, No. 1.
2. S. Achhra Singh s/o S. Kehar Singh Advocate, Bassi 2, Pepsu.
3. Shri Naurata Ram s/o Pt. Udhoo Ram V. Machhlikalan Tehsil Bassi Distt. Fatehgarh Sahib (Pepsu), 3.
4. S. Meghar Singh s/o S. Arjan Singh V. Gharuan P.O. Gharuan Tehsil Sirhind, PEPSU, 4.
5. S. Gurdial Singh s/o Ram Singh ward No. I House No. 343, Mohalla Soodan, Patiala (Pepsu).
6. S. Ganga Singh s/o Kahan Singh Bassi, Ward No. 4/67-68 (PEPSU).
7. S. Bakhshish Singh s/o Jit Singh V. Kalaur P.O. Kalaur Tehsil Sirhind, PEPSU.

8. Shri Dilbagh Ral s/o L. Gurditta Mal, Bassi Tehsil Sirhind House No. 4/94, PEPSU.
9. Shri Shakti Parshad s/o Pt. Atma Ram, Bassi, PEPSU.
10. S. Gurdial Singh s/o S. Shivdev Singh House No. 1 Ward No. 4. Respondent 10 Bassi, Pepsu.—Respondents.

ORDER DELIVERED ON 12TH SEPTEMBER 1955.

This is a petition by an elector calling in question the Election of S. Beant Singh to the Patiala & East Punjab States Union Legislative Assembly from the Bassi Constituency in the district of Patiala. The petitioner alleges that he is an elector in the Constituency and is entered as such on page 9 at No. 839 in the Electoral Roll of Qasba Bassi though the number is wrongly printed as 339 in the roll. The only ground alleged on which the election is sought to be set aside is that the nomination paper of S. Gurdial Singh respondent No. 10 had been improperly rejected by the Returning Officer as the appointment and acceptance of the Election-Agent as provided by S. 40 of The Representation of the Peoples Act, Act 43 of 1951 in Form 5-A had not accompanied the nomination paper. The rejection of the nomination paper, it is alleged, has materially affected the result of the Election and it should accordingly be declared wholly void.

All the duly nominated candidates have been joined as respondents to the petition but S. Beant Singh, respondent No. 1 alone has filed a written statement and has contested the petition. This respondent has denied that the petitioner is an elector in the Constituency. It is contended that the rejection of the nomination paper of Respondent No. 10 was not improper or illegal and that the result of the election had not been materially affected because of the rejection. It is further contended that the declaration made in the nomination paper by Respondent No. 10 regarding the appointment of the Election Agent was false as no Election Agent was in fact appointed before the delivery of the nomination paper. It was averred that the provisions of Secs. 33 and 40 of the Act had not been complied with and the rejection of the nomination paper was therefore proper.

The following issues were framed:—

Issues.—

- (1) Whether the petitioner is an elector in the Bassi Constituency? O. P. on petitioner.
- (2) Whether the appointment of the Election Agent by respondent No. 10 S. Gurdial Singh, was duly made as required by Section 40 of the Act? O. P. on petitioner.
- (3) Whether declaration by S. Gurdial Singh regarding the appointment of his election agent was false and as a matter of fact no agent was appointed? O. P. on respondent.
- (4) Whether the rejection of the nomination paper of S. Gurdial Singh by the Returning Officer on the ground that form 5-A should have accompanied the nomination paper was improper, wrongful or illegal? O. P. on petitioner.
- (5) Whether the fact that the nomination papers contained the declaration regarding the appointment of the election agent, if not false, amounted to a substantial compliance with the provisions of law? O. P. petitioner.
- (6) Whether the fact, that the acceptance of election agent was not filed with the nomination paper, was merely a technical defect and not of a substantial character and, therefore, should not have prevailed with the Returning Officer? O. P. on petitioner.
- (7) Whether the result of election was materially affected if the rejection of nomination paper was improper or illegal? O. P. on petitioner.
- (8) Relief.

Issue No. 1.

The petitioner has produced the electoral roll of the Constituency and one Ranbir Singh is entered at page 9 of the roll. The number of the elector is printed as 339. This number is obviously a misprint. The names are printed in serial number and the number above 339 is 838 and the one below is 840. There can be no doubt that the number 339 is a misprint for 839. To prove that the entry relates to him the petitioner has made his own statement and has produced P.W. 2 Hari Chand, Accountant Assistant Custodian's Office, Bassi to show that a house was allotted to him and P.W. 5 Ajmer Singh, Patwari, Halqa Bassi to show that land was allotted to him. P.W. 4 Jasbir Singh is the brother-in-law of the

petitioner and P.W. 6 Dr. Inder Singh is a neighbour. Both these witnesses say that the entry in the roll relates to the petitioner. The respondents witness R.W. 4 Jaswant Singh and R.W. 5 Kesar Singh also admit that the petitioner resides in Bassi and is their neighbour. The learned counsel for the respondent in the circumstances concedes that the petitioner has proved that he was an elector in the constituency and as such entitled to present the petition.

The issue is decided in favour of the petitioner.

Issues 2 to 4.

For the determination of the question whether the nomination paper of Respondent No. 10 had or had not been improperly rejected we may take note of two important dates. The last date for filing the nomination papers was 9th January, 1954. The scrutiny of nominations under Section 30 of the Act took place on 13th January, 1954. Respondent No. 10 S. Gurdial Singh was in the judicial lock up during that period and Respondent No. 1 Beant Singh and Harphul Singh, brother of S. Gurdial Singh had interviewed him in the lock up on 7th January, 1954 and got certain documents executed relating to the nomination of S. Gurdial Singh. S. Bhag Singh was incharge of the lock up and as such was present at the interview. After the execution of the documents the papers were handed over to Respondent No. 1 who along with Harphul Singh took them outside the lock up. It is stated that Sarabjit Singh who is said to have been appointed as the Election Agent was waiting outside the lock up and that these documents were handed over to him to be presented before the Returning Officer.

Three nomination papers of S. Gurdial Singh were presented by Sarabjit Singh to the Returning Officer on 8th January, 1954 but the appointment and acceptance of the election agent in Form 5-A was not filed along with them. The case of the petitioner is that S. Gurdial Singh had filled in Forms 5-A also along with the nomination papers but Sarabjit Singh by mistake kept these forms with him and did not present them till the 9th January, 1954 at 12-30 P.M. The contention of the respondent, however, is that on the 7th January only the nomination papers were filled in and not Forms 5-A. On the 9th January two more nomination papers of Gurdial Singh were presented to the Returning Officer at 2-10 P.M. alongwith two Forms 5-A. There were thus five nomination papers of Respondent No. 10 Gurdial Singh before the Returning Officer on the day of the scrutiny. All these five nomination papers were presented by Sarabjit Singh whose name was entered in all the nomination papers as the Election Agent. In one of the three nomination papers filed on the 8th January Sarabjit Singh was also entered as the proposer. This nomination paper is marked Ex. P.W. 3/2 on the record. Objections were raised with regard to all the five nomination papers. Four of these were rejected on the ground that they were not presented either by the candidate himself or by the proposer or the seconder. In respect of the fifth nomination paper that is Ex. P.W. 3/2 the objection was that the acceptance of the Election Agent in Form 5-A had not been filed alongwith the nomination paper and further it was contended that in fact no appointment of the Election Agent had been made before the delivery of the nomination paper as contemplated by Section 40 of the Act and the declaration of appointment in the nomination paper was false. In the enquiry made by the Returning Officer he examined S. Gurdial Singh, Pleader, the candidate himself, S. Bhag Singh incharge lock up, Beant Singh (now Respondent No. 1) who had got the nomination papers filled in by S. Gurdial Singh on the 7th January, and Sarabjit Singh who presented the nomination papers to the Returning Officer. S. Gurdial Singh stated that he had filled in Form 5-A also alongwith his nomination papers but both Bhag Singh and Beant Singh stated that only the nomination papers and not Form 5-A had been filled in on that day. Sarabjit Singh supported Gurdial Singh and stated that he had received from Respondent No. 1 Forms 5-A also on the 7th duly filled in but that they had remained in his pocket and were not presented alongwith the nomination papers on the 8th January. The Returning Officer in his order dated 13th January, 1954 Ex. R1 has given the reason why he did not place reliance on the statement of Sarabjit Singh. He found that the Form 5-A had no folds in it and did not bear any marks of having been kept in the pocket for two or three days. He believed the evidence of S. Bhag Singh and Beant Singh and did not believe S. Gurdial Singh. He came to the conclusion that the appointment of the Election Agent in Form 5-A had not been made before the filing of the nomination paper and apart from this he was of the view that presentation of the Form 5-A alongwith the nomination paper was a necessary requirement of the law and basing his conclusions on a judgment of the Election Tribunal Barnala reported in 7E.L.R. 90 (Isher Singh Vs. Manjit Inder Singh and others) he rejected the nomination paper on that ground.

In another case before us Election Petition No. 7 of 1954 S. Gurdial Singh Vs. Shrimati Manmohan Kaur and others decided on 16th April, 1955 we have held that although the appointment of the Election Agent and his acceptance in Form

5-A in accordance with the provisions of S. 40 of the R.P.A. was necessary before the delivery of the nomination paper, the law had not provided that Form 5-A must accompany the nomination paper when presented to the Returning Officer. In this view of the matter a nomination paper, otherwise in order, cannot be rejected by the Returning Officer under S. 36 of the Act simply for the reason that Form 5-A had not accompanied the nomination paper. In cases therefore where Form 5-A has not been presented along with the nomination paper it is necessary to enquire further whether the Form 5-A had not been filled in and completed before the delivery of the nomination paper.

In the present petition also Form 5-A has not been presented alongwith the nomination paper and therefore a further consideration whether the appointment of the Election Agent and his acceptance was made in Form 5-A before the delivery of the nomination paper is necessary.

The petitioner has placed reliance on the statement of S. Gurdial Singh Ex. P.W. 9/1 made before the Returning Officer. He has examined him as P.W. 9 to prove that statement. Gurdial Singh has reiterated that he had filled in Form 5-A on the 7th January, 1954 alongwith the nomination paper Ex. P.W. 3/2. R.W. 18 Beant Singh, Respondent No. 1 and R.W. 2 Bhag Singh have again stated that only nomination papers and not Form 5-A were filled in on that date. Sarabjit Singh has not been examined before us. R.W. 14 Bachittar Singh is another witness who needs some consideration. He is one of the long series of witnesses produced on behalf of the respondent to prove that the election in the constituency was fought on party lines and whoever succeeded in obtaining the Akali ticket would have won the election. In the examination-in-Chief he stated nothing of importance but in cross-examination he supported the entire case of the petitioner. He stated that he had also gone to the lock up on 7th January with Respondent No. 1 Beant Singh, Harphul Singh and Sarabjit Singh, and that there were two or three other persons also with them. Respondent No. 1 and Harphul Singh had gone inside the lock up and the others remained outside. When Respondent No. 1 and Harphul Singh returned, he stated, they had the nomination papers and also Forms 5-A duly filled in and these were given to Sarabjit Singh who appended his signatures in token of acceptance on Form 5-A. The learned counsel for the petitioner has argued that the statement of P.W. 9 Gurdial Singh read with the statement of R.W. 14 Bachittar Singh proves his allegations conclusively. He has urged that in this case the petitioner was in a difficult position because both S. Gurdial Singh and Respondent No. 1 Beant Singh are members of the Akali party and were both interested in retaining the seat for the party. In these circumstances it was not possible for him to produce more witnesses in the case and the evidence on the record should be read with this circumstance in view. It has been urged that S. Gurdial Singh is a pleader and a respectable man of status and there is no reason to disbelieve his evidence. We have given our best consideration to the argument of the learned counsel for the petitioner but we are unable to accept it. S. Gurdial Singh was anxious to contest the election and did not want his nomination paper to be rejected. He made a statement before the Returning Officer which was in his own favour and having once made that statement, he could not go back upon it. The date of the execution as given in Form 5-A is 7th January, 1954. The suggestion on behalf of the petitioner is that the Form was antedated and was in fact filled in on 9th January. The statement of S. Gurdial Singh has, therefore, to be examined with care. The learned counsel for the petitioner had to examine him with great caution and beyond asking him whether the statement made by him before the Returning Officer was true or not he asked nothing more on this point. To this question Gurdial Singh, of course, replied in the affirmative but in cross-examination he stated that the Forms were filled in under the direct supervision of S. Bhag Singh and Respondent No. 1 Beant Singh was also at such close proximity that he was able to see clearly what papers were being filled in. It was thus clear that both Bhag Singh and Beant Singh were witnesses to the filling in of these Forms and could with certainty state what Forms were actually filled in. It is, under the circumstances, not possible to rely on the statement of Gurdial Singh alone. R.W. 14 Bachittar Singh is also not a witness of truth. No witness names him as one of the persons who went to the lock up on 7th January. No attempt was made by the petitioner to establish Bachittar Singh's presence while cross-examining the witnesses of the respondents. There was not even a suggestion that Bachittar Singh or any other person had also gone to the lock up with Respondent No. 1, Harphul Singh and Sarabjit Singh. Even Beant Singh Respondent No. 1 was not asked about the presence of this witness outside the lock up. He was not produced before the Returning Officer and indeed his statement comes as a complete surprise. His statement does not inspire any confidence at all. His presence outside the lock up is not proved and we rejected his evidence. There is no other evidence on this point. We do not consider it necessary to refer

to the other witnesses on behalf of the respondent who have merely stated that the election was fought on party lines, that individuality of a candidate did not count and that the candidate who secured the Akali ticket was bound to win. We consider that these considerations are entirely beside the point and do not arise in the case.

We find, therefore, that the Returning Officer was right in rejecting the nomination of Respondent No. 10 S. Gurdial Singh but the rejection could only be on the ground that the appointment and acceptance of the Election Agent as provided by S. 40 of the Act had not been made in Form 5-A before the delivery of the nomination paper. Merely non-presentation of Form 5-A along with the nomination paper is not "failure to comply with any provisions of S. 33" and the nomination could not be rejected under S. 36 of the Act on that ground.

Issues 5 and 6.

These issues do not arise and are disposed of accordingly.

Issues 7 and 8.

The rejection of the nomination not being improper the question whether the result of the election was materially affected does not arise.

The petitioner is, therefore, not entitled to any relief and the petition is dismissed with costs to the contesting Respondent No. 1 alone. We assess the costs at Rs. 265/-.

(Sd.) NAWAL KISHORE.
Chairman.

(Sd.) KRISHNA SAHAI.
Member.

(Sd.) DALIP SINGH.
Member.

[No. 82/15/54/10993.]

By Order,

P. S. SUBRAMANIAN, Secy.

